

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RITA STRAND,
520 E 1st St.
Spencer, IA 51301**

**Menards Inc.
5101 Menard Dr.
Eau Claire, WI 54703**

**DIA APPEAL NO. 21IWDUI0067
IWD APPEAL NO. 20A-UI-07846**

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RITA STRAND
Claimant

MENDARD, INC.
Employer

**DIA APPEAL NO. 21IWDUI0067
IWD APPEAL NO. 20A-UI-07846**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 3/29/2020
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Claimant, Rita Strand, filed an appeal from a July 10, 2020 (reference 01) unemployment insurance decision denying benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 27, 2020. Claimant appeared and testified; she was represented by Kerry Self. Employer, Menards, Inc., appeared through Sonja Sievers, who testified. The entire administrative file, including the decision under review, was admitted into the record, and the matter is now fully submitted.

ISSUES:

Was Claimant able to and available for work; eligibility – A&A – Leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant commenced working for Employer on or about June 17, 2017, and she has served as a part-time cashier for Employer since then. Starting on approximately March 26, 2020, she took leave from Employer due to her concerns about being exposed to Covid-19 given that she is at a higher risk of complications due to her age. A “Menards Emergency Leave Request For Covid-19 Related Circumstances” form was completed, identifying the work absence as a “leave of absence” to last through May 5, 2020, and both Claimant and Employer signed it. Employer Ex. 1.

After May 5, 2020, Claimant resumed working part time for Employer; however, due to the ongoing concern about Covid-19 exposure, Claimant took another leave of absence from May 27, 2020, to June 26, 2020. Again, a similar leave form was completed with both Claimant and Employer approving of the leave. Employer Ex. 2. Claimant resumed her duties as a part-time cashier after this leave of absence because she did not want to lose her job as she needed the income from it.

On March 29, 2020, Claimant filed for unemployment insurance benefits, in order to have some support during at least her first leave of absence. In a decision dated July 10, 2020 (reference 01), the Department denied unemployment insurance benefits because it found she requested

and was granted a leave of absence and because such indicates the individual was voluntarily unemployed and not available for work. Decision, at p. 1. Claimant appealed.

At the hearing, Claimant testified she felt unsafe at her work. Claimant testified she did not have access to adequate personal protective equipment, and her store was not cleaned as often as she believed was necessary to mitigate the risk of Covid-19 spread. She also testified how it took some time for Employer to create a mask mandate for customers. In response, Employer provided testimony concerning the frequency of cleaning and available personal protective equipment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph b, subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph c. The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph h.

Iowa Administrative Code rule 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

To be able to work, “[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual’s customary occupation, but which is engaged in by others as a means of livelihood.” *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged Ass’n*, 468 N.W.2d 223, 225 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). “An evaluation of an individual’s ability to work for the purposes of determining that individual’s eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides.” *Sierra*, 508 N.W.2d at 723.

Iowa Administrative Code rule 871-24.22(2) provides:

Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an

individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Administrative Code rule 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.


(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The burden is on the claimant to establish that he is able to and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

In this case, the credible evidence establishes Claimant requested and was granted a leave of absence twice, once from the end of March to the beginning of May and the other from the end of May through the end of June. Agreed upon leaves of absence are, as a matter of law, disqualifying. This is true even if the motivating reason behind the leave is health. The exceptions for partial unemployment or temporary unemployment do not apply in part because of the lack of any work during the relevant weeks and because of the length of time the absences continued. See Iowa Code § 96.19(38). This is also true despite Claimant's argument that she did not voluntarily enter a leave of absence because of the danger of Covid-19 because the law only considers whether she requested the leave and was granted such. This is not a case of whether there was sufficient good cause for a quit from employment, in which case the analysis would be drastically different. As such, the Department's action must be AFFIRMED.

DECISION:

The July 10, 2020 (reference 01) unemployment insurance decision is AFFIRMED.



Jonathan M. Gallagher
Administrative Law Judge

August 28, 2020
Decision Dated and Mailed

JMG/lb

cc: Rita Strand, Claimant (by first class mail)
Kerry Self, Claimant's representative, Hemphill Law Office, 215 Grand Ave, PO Box
1475, Spencer, IA 51301 (by first class mail)
Menards Inc, Employer (by first class mail)
Nicole Merrill, IWD (by email)
Joni Benson, IWD (by email)

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.